

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer in part. NM-58790.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases:  
Noncompetitive Leases

BLM must reject a noncompetitive oil and gas lease offer to the extent it includes land determined after the filing of simultaneous oil and gas lease applications to be within a known geologic structure which, under 30 U.S.C. § 226(b) (1982), is subject to leasing only by competitive bidding.

APPEARANCES: John Budde, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE GRANT

John Budde has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 29, 1984, rejecting in part his noncompetitive oil and gas lease offer, NM-58790.

Appellant's simultaneous oil and gas lease application, NM-58790, was drawn with first priority for parcel NM-227, on the September 1983 list of parcels available for filing. Parcel NM-227 embraced 520 acres of land situated in secs. 15 and 22, T. 22 S., R. 22 E., New Mexico Principal Meridian, Eddy County, New Mexico. By decision dated July 19, 1984, BLM required appellant to submit executed copies of the lease offer and the first year's rental payment within 30 days of receipt of the decision. On July 27, 1984, appellant submitted the required documents.

By memorandum dated August 13, 1984, the BLM District Manager, Roswell, New Mexico, informed the State Director, that a portion of the land included in appellant's lease offer, i.e., 80 acres, had been determined to be within an undefined known geologic structure (KGS), effective January 26, 1984. In its August 1984 decision, BLM rejected appellant's lease offer to the extent it included land within a KGS, because the land was unavailable for leasing

except through competitive bidding pursuant to 43 CFR Subpart 3120. Effective September 1, 1984, BLM issued to appellant a noncompetitive oil and gas lease covering the remainder of the lands included in appellant's lease offer.

In his statement of reasons for appeal, appellant states his lease offer was rejected in part based on a KGS determination made 4 months after parcel NM-227 was posted for noncompetitive oil and gas leasing in September 1983. Appellant also contends the KGS determination is "unsupported by the facts," contrary to BLM's statutory authority, and inconsistent with BLM practice to extend a KGS only to either 2,000 feet or the eight adjoining 40-acre tracts "surrounding a producing site."

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands within the KGS of a producing oil or gas field "shall be leased \* \* \* by competitive bidding." See also 43 CFR 3100.3-1. If lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of the lease, the lease offer must be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985); 43 CFR 3112.5-2(b). <sup>1/</sup> The Department has no discretion to issue a noncompetitive oil and gas lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195 (1983). Similarly, where part of the land included in a noncompetitive oil and gas lease offer is designated as within a KGS prior to issuance of a lease, the lease offer must be rejected to that extent. Harry S. Hills, 71 IBLA 302 (1983).

Moreover, BLM does not obligate itself to issue a lease merely by selecting applications in the simultaneous system, or by posting lands and receiving simultaneous oil and gas lease applications. As we said in Evelyn D. Ruckstuhl, supra at 72-73: "A drawing does not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing. R. K. O'Connell, 85 IBLA 29 (1985); Joseph A. Talladira, [83 IBLA 256 (1984)]. McDade v. Morton, supra at 1010." See also Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969). The signing of an offer by an authorized BLM officer constitutes acceptance of the offer and creates a binding contract. Harry S. Hills, supra; see 43 CFR 3112.6-1(a) (lease agreement signed by offeror constitutes "offer to lease").

Although appellant has challenged the correctness of the KGS determination, he has provided no data to support his contention. The burden of proving the KGS determination to be in error is on appellant. Evelyn D. Ruckstuhl, supra. A KGS is defined as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to

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<sup>1/</sup> 43 CFR 3112.5-2(b) provides:

"If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field."

be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5(1). A KGS designation recognizes the existence of a continuous entrapping structure on some part of which there is production. It does not guarantee the productivity of all lands in the structure. See John P. Brogan, 85 IBLA 379 (1985); Robert G. Lynn, 61 IBLA 153 (1982).

The designation of KGS's pursuant to 30 U.S.C. § 226(b) (1982) is the responsibility of BLM, the Secretary of the Interior's technical expert in this regard, and the Secretary is entitled to rely on BLM's reasoned opinion. Champlin Petroleum Co., 86 IBLA 37 (1985). Although the record in this lease file does not disclose the data supporting the KGS determination, we will not require BLM to submit supporting documentation and analysis if appellant has provided no evidence to rebut the determination. Stephen M. Naslund, 79 IBLA 252 (1984). Finally, we can find no support in Departmental procedures or regulations for appellant's assertion that BLM was limited to extending a KGS a certain distance around a producing well. Indeed, in Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347 (8th Cir. 1984), cert. denied, \_\_ U.S. \_\_, 105 S. Ct. 905 (1985), the court rejected an arbitrary system for defining a KGS such as appellant is urging, because it was inconsistent with Congressional intent in enacting 30 U.S.C. § 226(b) (1982).

Therefore, we conclude BLM properly rejected appellant's lease offer to the extent it encompasses land within a KGS.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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R. W. Mullen  
Administrative Judge.

